

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  MIDWEST GRAIN PROCESSORS COOPERATIVE	DOCKET NO. P-846
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**ORDER ESTABLISHING PROCEDURAL SCHEDULE AND PROPOSING TO TAKE  
OFFICIAL NOTICE AND NOTICE OF HEARING**

(Issued March 13, 2002)

On January 15, 2002, Midwest Grain Processors Cooperative (Midwest Grain) filed a petition and exhibits for a permit to construct, operate, and maintain a natural gas pipeline approximately two miles long in Kossuth County, Iowa. The proposed 6-inch diameter steel pipeline will transport natural gas from Northern Border Pipeline Valve Number 51 near Ledyard, Iowa, to a Midwest Grain ethanol plant that will be approximately two miles south of Valve Number 51.

On March 12, 2002, the Utilities Board (Board) assigned this proceeding to a presiding officer and directed that a procedural schedule be established and a date set for hearing.

**The Board's Authority and Jurisdiction**

The Board has authority to grant permits for pipelines in whole or in part upon terms, conditions, and restrictions as to safety requirements, and as to location and

route, as it determines to be just and proper. Iowa Code §§ 479.12 and 479.18 (2001).

To obtain a permit, the petitioner must show that the services it proposes to render will promote the public convenience and necessity. Iowa Code § 479.12 (2001). The petitioner must also satisfy the financial requirements of Iowa Code § 479.26 (2001).

### **The Issues**

Pursuant to Iowa Code §§ 479.7 and 479.8 (2001) and 199 IAC 10.6, this matter will be set for a public hearing for the presentation of oral and documentary evidence and the cross-examination of witnesses concerning the public convenience and necessity issue, any safety issues, any pipeline location and route issues, the financial issues, and issues raised by objectors or any other party. The conduct of this case will be governed by Iowa Code Chapters 17A and 479 (2001), and by Board rules at 199 IAC chapters 9 and 10.

### **Prepared Testimony and Exhibits**

All parties will be given the opportunity to present and respond to evidence and argument on all issues, and to be represented by counsel at their own expense. Iowa Code § 17A.12(4) (2001). The proposed decision and order that the administrative law judge will issue in this case must be based on evidence contained in the record and on matters officially noticed in the record. Iowa Code § 17A.12(8) (2001). Unless contrary arrangements are made on the record at the hearing, all

evidence will be received at the hearing, and the record will be closed to any further evidence at the conclusion of the hearing.

The submission of prepared evidence prior to hearing will help to identify disputed issues of fact to be addressed at the hearing. Prepared testimony contains all statements that a witness intends to give under oath at the hearing, set forth in question and answer form. When a witness who has submitted prepared testimony takes the stand, the witness does not ordinarily repeat the written testimony or give a substantial amount of new testimony. Instead, the witness is cross-examined by the other parties concerning the statements already made in writing. The use of prepared testimony prevents surprise at the hearing and helps each party to prepare adequately for the hearing, so that a full and true disclosure of the facts can be obtained. Iowa Code §§ 17A.14(1), 17A.14(3) and 479.11 (2001). This procedure also tends to diminish the length of the hearing, and spares the parties the expense and inconvenience of additional hearings.

Midwest Grain must submit prepared testimony and exhibits prior to the hearing. At a minimum, Midwest Grain's prepared testimony must address the issues listed above. Prior to or with its prepared testimony, Midwest Grain must file amendments to its petition as discussed in the letter dated February 11, 2002 from Mr. Stursma to Mr. Barber. Midwest Grain must also file additional financial information that shows it has property **within Iowa, other than pipelines, subject to execution, of a value in excess of \$250,000.** Iowa Code § 479.26 (2001).

Alternatively, Midwest Grain may file and maintain a surety bond as required by the

statute. *Id.* Exhibit D attached to the petition does not contain sufficient information. It is unclear whether a minimum of \$250,000 of the company's property, other than pipelines, is in Iowa and subject to execution. Midwest Grain may satisfy this requirement by filing an affidavit of a corporate officer. This financial information must be filed with the other amendments to the petition.

The Consumer Advocate Division of the Department of Justice (Consumer Advocate), and any objectors may also file prepared testimony and exhibits before the hearing in accordance with the procedural schedule.

Parties who choose not to file prepared testimony and exhibits before the hearing will not be precluded from participating in the proceedings. If an objector, for example, does not intend to present evidence going substantially beyond the information contained in the letter of objection, it is unnecessary for the objector to file prepared testimony. However, when a party has a substantial amount of information to present to the Board about the petition, if the information has not been previously disclosed to the Board, it should be presented in the form of prepared testimony and exhibits according to the procedural schedule established below.

### **Party Status**

Midwest Grain and the Consumer Advocate are currently the only parties to this proceeding. Iowa Code §§ 17A.2(8) and 475A.2 (2001). No one has filed an objection to the petition as of the date of this order.

Anyone who has filed or will file an objection pursuant to Iowa Code §§ 479.9 and 479.10 (2001) and 199 IAC 10.5 will also be presumed to be a party to this case.

However, no objector is entitled to party status merely because that person has written a letter. In order to qualify as a party, the objector must be able to demonstrate some right or interest that may be affected by the granting of the permit. Iowa Code § 479.9 (2001). An objector's status as a party may be challenged at the hearing, and an objector who cannot demonstrate a right or interest that may be affected by the granting of the permit will no longer be considered a party. Therefore, at minimum, objectors should be prepared to give evidence that will explain the nature of their specific rights or interests they believe should be protected, and will show how these rights or interests will be affected by the pipeline. As has already been noted, to the extent that the evidence goes substantially beyond information already communicated to the Board in an objection letter, it should be reduced to writing and filed as prepared testimony according to the procedural schedule established below.

Because objectors will be presumed to be parties up to the time of the hearing, an objector will receive copies of all documents that are filed in this docket after the letter of objection has been filed with the Board. This means that if a person files an objection after some or all of the prepared testimony and exhibits have already been filed with the Board by other parties, the objector should make direct contact with the parties who have already filed prepared testimony and exhibits in order to obtain a copy of those materials. The official file of this case will be available for inspection at the Utilities Board Records Center, 350 Maple Street, Des Moines, Iowa. 199 IAC 1.9(1).

Objections must be filed not less than five days prior to the date of hearing.

Late filed objections may be permitted if good cause is shown. 199 IAC 10.5.

Objections must be made in writing and filed with the Executive Secretary of the Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

After an objector has filed a letter of objection, all further communications from the objector to the Board having to do with this case (including motions or prepared testimony and exhibits) must be sent to the Executive Secretary. A party (including objectors) must file an original and two copies of each communication with the Executive Secretary, and the party must send one copy to each of the other parties to this case. 199 IAC 1.8. Along with the communication being sent, the party must file with the Board a certificate of service that conforms to 199 IAC 2.2(16), which verifies a copy of the document was served upon the other parties. These procedures are necessary to comply with Iowa Code § 17A.17 (2001), which provides in part:

Unless required for the disposition of ex parte matters specifically authorized by statute, parties or their representatives in a contested case and persons with a direct or indirect interest in such a case *shall not communicate, directly or indirectly, in connection with any issue of fact or law in that contested case, with a presiding officer in that contested case, except upon notice and opportunity for all parties to participate* as shall be provided for by agency rules.

Iowa Code §§ 17A.17(2) (2001)(emphasis added). Objectors and parties should examine 199 IAC Ch. 10 and 199 IAC 1.8 for other substantive and procedural rules that apply to this case.

### **Proposal to Take Official Notice**

Mr. Gary R. Burnett, utility regulatory inspector for the Safety & Engineering Section, has prepared a memo dated February 11, 2002, concerning Midwest Grain's petition pursuant to Iowa Code § 479.11 (2001). A copy of the memo is attached to this order. Pursuant to Iowa Code § 17A.14(4) (2001), the administrative law judge proposes to take official notice of the memo and of the facts contained therein, thus making them a part of the record of this case. Iowa Code § 17A.12(6)(c) (2001). Any party objecting to the taking of official notice of the memo must file such objection as soon as possible, and no later than five days prior to the hearing. The parties will have the opportunity to contest any information contained in the memo in prefiled testimony and at the hearing.

### **IT IS THEREFORE ORDERED:**

1. Each person who files a letter of objection to Midwest Grain's petition in this docket will be presumed to be a party in the proceeding unless it is established at hearing that the objector has no right or interest that may be affected by the pipeline.
2. Objections must be made in writing and filed with the Executive Secretary of the Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069, no later than five days before the hearing. Objectors must file an original and two copies of all subsequent communications to the Board with the Executive Secretary. The communications must be accompanied by a certificate of service.
3. The following procedural schedule is established:

a. On or before April 8, 2002, Midwest Grain must file prepared direct testimony relating to its petition for a permit to construct, operate, and maintain a natural gas pipeline, and must file the amendments to its petition as discussed above.

b. On or before April 29, 2002, the Consumer Advocate and any objector may file prepared responsive testimony; and

c. A public hearing for the presentation of evidence and the cross-examination of witnesses concerning the issues identified in this notice of hearing will be held at 10 a.m. on Wednesday, May 15, 2002, in the Board Hearing Room, 350 Maple Street, Des Moines, Iowa. Persons with disabilities who will require assistive services or devices to observe this hearing or participate in it should contact the Utilities Board at (515) 281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

4. The administrative law judge proposes to take official notice of Mr. Burnett's memo dated February 11, 2002 and attached to this order, and of the facts contained therein. Any party objecting to the taking of official notice of the memo should file such objection as soon as possible, and must file such objection no later than five days prior to the hearing. Any party desiring to cross-examine Mr. Burnett concerning the statements contained therein must file a notice of intent to cross-examine no later than five days prior to the hearing.

5. Pursuant to Iowa Code §§ 17A.12(1) (2001) and 199 IAC 10.4, a copy of this order will be served by ordinary mail upon Midwest Grain and the Consumer

Advocate. No persons have filed objections to the petition as of the date of this order.

**UTILITIES BOARD**

/s/ Amy L. Christensen  
Amy L. Christensen  
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

Dated at Des Moines, Iowa, this 13<sup>th</sup> day of March, 2002.

# **Iowa Utilities Board**

## **SAFETY AND ENGINEERING SECTION**

**TO:** Docket No. P-846 File

**FROM:** Gary R. Burnett

**DATE:** FEBRUARY 11, 2002

**SUBJ:** Midwest Grain Processors Cooperative  
Petition For Natural Gas Pipeline Permit

On January 15, 2002, Midwest Grain Processors Cooperative filed a petition for natural gas pipeline permit with the Utilities Board. Midwest Grain Processors Cooperative proposes to construct approximately 2 miles of 6 inch diameter steel pipeline for the transportation of natural gas from Northern Border pipeline valve Number 51 near Ledyard, Iowa, in Kossuth County to a grain processing plant. The plant will sit approximately 2 miles south of valve Number 51.

On February 6, 2002, an inspection was conducted of the proposed route. On the day of the inspection the weather was sunny, cold, and dry. The Exhibit B (map) and Exhibit F (route description) were used as a guide. The exhibits show the pipeline will be routed through privately owned lands and for most of its length parallel to 160<sup>th</sup> Ave. The land is flat throughout the 2 mile distance. It consists of mostly row crop land (field corn and soybean). The only areas not in cropland are where the pipeline crosses roads, a railroad, and farm drives.

There are 2 farm homes along the proposed route. One home on the east side of 160<sup>th</sup> Avenue will lay at least 300 ft. from the proposed pipeline. The other home, which is shown on the map, is on the west side of 160<sup>th</sup> Avenue and lays an estimated 55 feet from the proposed pipeline. There are no schools, churches, playgrounds or county parks along the route. The pipeline will be classified as in a Class 1 location; the plant area may be Class 3 depending on the number of persons who will normally present. Nothing was noted that would make the proposed route unacceptable or cause unusual construction problems.

At the residence on the west side of the road, the map shows that the pipeline would be bored (rather than trenched) under a row of trees. Inspection found a row of five mature pine trees along the road at this location. It appears boring would minimize construction impact on the trees. There are no other trees on the route. There are no waters or streams of significance to be crossed. The filing anticipates that the pipeline will make approximately nine crossings of drain tile. This number cannot be confirmed but this appears an area where drain tile would be common.

It was also noted that the existing gas recipient at Valve 51 is Alliant Energy, not MidAmerican as shown on the map.

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